IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE TWENTY FIFTH DAY OF JANUARY
TWO THOUSAND AND SIX

PRESENT

THE HON'BLE MR JUSTICE R.SUBHASH REDDY

WRIT PETITION No. 13919 of 1999

Between:

M/s The Projects & Equipment Corporation

of India Limited Rep by its Authorised Representative

Mr. Bansilal Agarwal

..... PETITIONER

AND

Government of A.P. Rep by its Secretary,

Food & Agriculture (Marketing) Dept.
Secretariat, Hyderabad and another

.....RESPONDENTS

ORDER:

The petitioner, a Government of India undertaking enterprise, which is nominated as a canalizing agency for importing of wheat, filed this writ petition, challenging the

notice dated 09.03.1999 issued by the Selection grade Secretary, Agricultural Market Committee, Kakinada. In the said notice, the petitioner was directed to pay license fee and market fee on the wheat purchase and sales, undertook by him within the notified area of Market Committee, Kakinada.

The petitioner organization was nominated by the Government. The Government of India, through Director General of Foreign Trade, has notified a policy in the year 1988 for import of wheat, which is required for roller flourmills. The said policy was notified in view of the difficulties faced by the notified flourmills for not securing required quantity of wheat. During the relevant year, the petitioner, acting as a nominating agency under the Government of India, had imported 85,000 MTs of wheat from outside India through Kakinada port in the State of Andhra Pradesh.

It is a case of the petitioner that inasmuch as the petitioner is not doing any business either sale or purchase within the notified market area, the question of payment of market fee, as per the provisions of the Andhra Pradesh (Agricultural Produce and Livestock) Markets Act, 1966 (for short 'the Act'), will not arise. In support of his argument, Sri S.Ravi, counsel appearing for the petitioner, has placed a reliance of the Division Bench judgment of this Court in ***Modern Nutrition Company, Hyd. V. Agricultural Market Committee and Ors.***. Further it is submitted that in any event, unless the issue with regard to sale and purchase is examined, straight away no demand can be made either for payment of license fee or the market fee. It is also submitted that the petitioner is prepared to furnish statements and particulars of transaction of the relevant year so as to show that there was no sale or purchase within the notified Market Committee.

On the other hand, it is submitted by the learned standing counsel appearing for the Market Committee that the petitioner, under guise of nominating agency under the Government of India, is doing business by purchasing and selling of wheat by importing the same from foreign countries, and in that view of the matter, the petitioner is required to pay the market fees as per the provisions of the Act.

In the referred judgment, the Division Bench of this Court, interpreting the provisions under Section 12 of the Andhra Pradesh (Agricultural Produce and Livestock) Markets Act, 1966, declared that charging of market fees under Section 12 would arise only in case of purchases and sales within the notified market area. Further it is held that goods, which are purchased outside and brought within the market area,

are not liable for levy of market fees. Whereas, it is a case of the petitioner that the petitioner is merely acted as a canalizing agency for importing wheat from foreign countries and did not do business either by purchasing or selling the commodity within the notified market area. On the other hand, it is a case of the respondent-Market Committee is that the petitioner has transacted business within the notified market area and liable to pay market fees. Even in the notice impugned in this writ petition, no reference is made with regard to any of the material to show that the petitioner has undertaken purchases or sales within the notified market area. The petitioner also relied on an unreported judgment of this Court in the case of ***M/s.Coromandal Roller Flour Mills Limited, Visakhapatnam vs. Agrl.Market Committee, Visakhapatnam and another*** in W.P.No.7509 of 1998, in which case, in such similar circumstances, on furnishing an undertaking by the petitioner therein, the writ petition was disposed of, directing the respondents therein to examine the same in accordance with law laid down by the Division Bench of this Court referred to above.

Though it is submitted by the learned counsel for the petitioner that the petitioner has not transacted any business, but unless and until the said issue is examined by the respondent authorities, whether the petitioner has undertaken any business by way of purchase or sales within the notified market area, the petitioner is not liable to pay any market fees. In the absence of any positive information produced by the respondents, straight away it is not possible to assume that the petitioner has undertook the business, sale and purchase within the notified market area so as to charging market fees as contemplated under Section 12 of the Act.

In view of the submissions of the learned counsel for the petitioner that the petitioner he is prepared to furnish statements and particulars of the transactions, I deem it appropriate to dispose of the writ petition, permitting the petitioner to file the relevant statements and particulars of transactions undertook by him during the relevant period, before the 2nd respondent Market Committee, within a period of six weeks from the date of receipt of a copy of this order. It is also open for the petitioner to file any other material, which is connected with the issue to show that he has not undertaken any purchases or sales, which attract the provisions under Section 12 of the Act for payment of market fees. On filing such statements and particulars by the petitioner, it is open for the 2nd respondent to examine and assess the same and communicate the decision to the petitioner. Till such communication is made to the

petitioner, no coercive steps shall be taken pursuant to the impugned notice dated 09.03.1999.

With the above observations, the Writ Petition is disposed of. No order as to costs.

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R.SUBHASH REDDY,J

Dated: 25.01.2006

Dsr